No. 06-10119

IN THE
Supreme Court of the United States

ALLEN SNYDER,

Petitioner,

v.

STATE OF LOUISIANA,

Respondent.

ON WRIT OF CERTIORARI TO THE
LOUISIANA SUPREME COURT

BRIEF OF NINE JEFFERSON PARISH MINISTERS AS AMICI CURIAE SUPPORTING PETITIONER

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INTEREST OF AMICI[1]

Amici are ministers of African-American churches in and near Jefferson Parish, Louisiana. *Amici* are:

Pastor Gilbert Barnes
Rock of Ages Missionary Baptist Church
Marrero, LA

Elder Warren L. Buchanan
Pastor of Berea Church of God in Christ
Harvey, LA

Elder Lee Franklin
Pastor of True Vine Church of God in Christ
Westwego, LA

Rev. Nathaniel Jimcoily[2]
Pastor of Mt. Olive Baptist Church
New Orleans, LA

Rev. Roy McDaniel
Pastor of Liberty Faith Baptist Church
Marrero, LA

Pastor Arthur Piper, Sr.
New Hope Baptist Church
Gretna, LA

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[1] Pursuant to Rule 37.3, letters of consent to the filing of this brief have been lodged with the Clerk of the Court. Pursuant to Rule 37.6, counsel for *amici curiae* state that no counsel for a party authored this brief in whole or in part, and no person other than *amici curiae*, their congregants, or their counsel made a monetary contribution to this brief.

[2] Although his church is in Algiers, a part of New Orleans directly adjacent to Jefferson Parish, Reverend Jimcoily is a resident of Jefferson Parish, as are many of his congregants.

Pastor Fred T. Porter
Cypress Grove Baptist Church
Marrero, LA

Bishop Joan Powell
Senior Pastor of Lovetouch Ministries
Gretna, LA

Elder Johnny Victor
Pastor of Avondale Church of God in Christ
Westwego, LA

Amici submit this brief on their own behalf and on behalf of their congregants. *Amici* and their congregants not only worship in Jefferson Parish; they live, work, vote, volunteer, recreate and raise their families there. Within Jefferson Parish's courts, *amici* and their congregants have been complainants, witnesses, plaintiffs, civil and criminal defendants, and citizens reporting for jury service. Unfortunately, however, the frequent use of peremptory challenges to exclude African Americans from criminal jury service has greatly undermined *amici*'s confidence in Jefferson Parish's criminal justice system. *See Batson v. Kentucky*, 476 U.S. 79, 87 (1986) (noting this consequence of the State's racial discrimination during jury selection).

For that reason and others, *amici* urge this Court to enforce the Fourteenth Amendment's Equal Protection Clause in Jefferson Parish and to reaffirm that prosecutors may not use peremptory strikes in a racially discriminatory manner. Given their longstanding interest in both the well being of Jefferson Parish's African-American community and the legitimacy and fairness of the parish's court system, the proper resolution of this case presents a matter of substantial importance to *amici* and their congregants.

STATEMENT OF THE CASE

In Allen Snyder's 1996 capital murder trial, "the State's use of five of its peremptory challenges to strike African-American prospective jurors who survived challenges for cause resulted in [Snyder's] being tried by an all-white jury." *State v. Snyder*, 942 So. 2d 484, 492 (La. 2006). Over defense objection, and despite guarantees by the prosecutor that he would not continue his pretrial invocations of O.J. Simpson in front of the jury, J.A. 49-56, the prosecutor argued for a death sentence by comparing Snyder to Simpson, "who got away with it." J.A. 606-07. The jury voted that Snyder should be sentenced to death.

A more detailed recitation of the facts and the procedural posture of the case are contained in the party briefs.

SUMMARY OF ARGUMENT

Snyder's all-white jury resulted from the prosecutor's use of peremptory strikes to exclude each and every eligible African-American venireperson. Representing African Americans across Jefferson Parish, *amici* know well the sting of racial discrimination in Jefferson Parish government, and during jury selection in particular. What happened in this case was not unique. As *amici* demonstrate, the Jefferson Parish District Attorney's Office has a historical record of racial discrimination and animus in capital jury selection. The elimination of racial discrimination from the justice system is necessary to ensure that citizens receive a fundamentally fair trial, and to ensure that the criminal justice system itself does not fall into disrepute.

As this Court stated long ago, "It is well known that prejudices often exist against particular classes in the community, which sway the judgment of jurors, and which, therefore, operate in some cases to deny to persons of those

classes the full enjoyment of that protection which others enjoy." *Strauder v. West Virginia*, 100 U.S. 303, 309 (1879); *see also Miller-El v. Dretke*, 545 U.S. 231, 237 (2005) (quoting *Strauder*). "[R]epresentation of [a] defendant's race on [his or her] jury may help to overcome racial bias and provide the defendant with a better chance of having a fair trial." *Georgia v. McCollum*, 505 U.S. 42, 61 (1992) (Thomas, J., concurring); *cf. Edmonson v. Leesville Concrete Co. Inc.*, 500 U.S. 614, 628 (1991) (finding that discrimination in the courtroom "raises serious questions as to the fairness of the proceedings conducted there"). A prosecutor's racially discriminatory use of peremptory strikes also harms the individual jurors excluded due to their race *and* the community, which loses confidence in a system in which racial discrimination is tolerated. *See J.E.B. v. Alabama*, 511 U.S. 127, 128 (1994); *Batson v. Kentucky*, 476 U.S. 79, 87 (1986) ("Selection procedures that purposefully exclude black persons from juries undermine public confidence in the fairness of our system of justice.").

Consistently recognizing these harmful consequences, this Court has exerted "unceasing efforts to eradicate racial discrimination in the procedures used to select the venire from which individual jurors are drawn." *Batson*, 476 U.S. at 85. *Batson* teaches that identifying, and therefore preventing, such discrimination requires an examination of "'all of the relevant circumstances.'" *Miller-El*, 545 U.S. at 240 (quoting *Batson*, 476 U.S. at 96-97).

The following circumstances provide important context for Snyder's *Batson* claim: 1) the Jefferson Parish District Attorney's historical use of peremptory challenges to exclude most eligible African-American venirepersons from capital murder trials, including numerous trials where all or nearly all eligible African-American venirepersons were excluded; 2) the Jefferson Parish District Attorney's history of racially offensive behavior regarding capital cases; and 3)

well-known evidence of troubling racial attitudes held by a substantial portion of white people in Jefferson Parish which were known to the prosecutor when he compared Snyder to the recently-acquitted Simpson in his argument for the death penalty, and which made it more likely that an all-white jury would be receptive to this inflammatory argument.

Amici provide this context out of concerns both for African Americans tried in Jefferson Parish and for those who, though qualified, were prevented from participating "in the administration of the law[] as jurors." *Strauder*, 100 U.S. at 308. *Amici* present the grave concerns of a community which has become increasingly cynical about the fairness and legitimacy of the criminal justice system.

ARGUMENT

ENFORCEMENT OF *BATSON* AND *SWAIN*[3] IS ESSENTIAL TO THE PARTICIPATION OF AFRICAN AMERICANS IN THE CRIMINAL COURTS OF JEFFERSON PARISH AND THE CREDIBILITY AND LEGITIMACY OF THE COURTS IN THE BLACK COMMUNITY.

Service on juries has been described by this Court as an essential component of citizenship. *Powers v. Ohio*, 499 U.S. 400 (1991) (noting that "jury service is an exercise of responsible citizenship by all members of the community, including those who otherwise might not have the opportunity to contribute to our civic life."). "Despite the clarity" of this Court's "commands to eliminate the taint of racial discrimination in the administration of justice, allegations of bias in the jury selection process persist." *Id.* at 400-401. Because this observation unfortunately remains

[3] *Swain v. Alabama*, 380 U.S. 202 (1965).

accurate in Jefferson Parish, the legitimacy of the courts among the African American community is in jeopardy.

A. Jefferson Parish Prosecutors Have Long Used Peremptory Strikes to Keep Capital Murder Juries All-White or Nearly All-White.

In *Swain v. Alabama*, 380 U.S. 202, 223-24 (1965), this Court held that a defendant could demonstrate that a prosecutor's use of peremptory strikes were racially discriminatory, and therefore prohibited under the Equal Protection Clause, by showing a prosecutor's longstanding pattern of racial discrimination "in case after case." In *Batson*, 476 U.S. at 92-93, the Court found *Swain*'s burden too high and held that a defendant could make out a prima facie case of discriminatory jury selection by showing a prosecutor's discriminatory conduct in defendant's own trial.

Under *Batson*, when a defendant makes out a prima facie case of discrimination, the prosecutor must come forward with race-neutral reasons for exercising the challenged peremptory strikes. *Id.* at 97. Assuming such reasons are given, the trial court then determines whether the prosecutor's purportedly race-neutral reasons are truthful – i.e., whether defendant has established intentional discrimination. *Id.* at 98. In *Miller-El*, 545 U.S. at 239-40, this Court reaffirmed that *Batson* did not render obsolete *Swain*'s analysis of the prosecutor's conduct outside the trial: "Some stated [race-neutral] reasons are false, and although some false reasons are shown up within the four corners of a given case, sometimes a court may not be sure unless it looks beyond the case at hand . . . to 'all relevant circumstances.'" *Id.* (quoting *Batson*, 476 U.S. at 96-97).[4]

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[4] As this Court stated in *Miller-El*, although "the move from *Swain* to *Batson* left a defendant free to challenge the prosecution without having to cast *Swain*'s wide net, the net was not entirely consigned to history, for *Batson*'s individualized focus came with a weakness of its own owing to"

Thus, *Swain*'s focus on a prosecutor's longstanding history of racial discrimination remains relevant to the *Batson* inquiry, even though it is not necessary to prevail on the claim. *See Miller-El*, 545 U.S. at 266 ("If anything more is needed for an undeniable explanation of . . . " the prosecutor's motivations ". . . history supplies it.").

Jefferson Parish prosecutors have historically used peremptory strikes to prevent qualified African-American venirepersons from performing their civic duties as jurors. The Louisiana Supreme Court has reversed a trio of Jefferson Parish cases, twice finding a *Batson* violation and once reversing on other grounds while noting the *Batson* problem. *See, e.g., State v. Harris*, 820 So. 2d 471, 474 (La. 2002) (finding *Batson* violation in capital murder trial where Jefferson Parish prosecutor struck three out of four African Americans, and argued that "*Batson* [was] an old case" changed "some" by subsequent law, and where purportedly "race-neutral" reason for striking an African-American venire person was that he was "a single black male on the panel with no children"); *State v. Jacobs*, 789 So. 2d 1280, 1283 n.2 (La. 2001) (reversing death sentence and conviction on other grounds but criticizing same trial judge who presided over petitioner's trial for failing to "properly address *Batson* challenges" made when prosecutor tried to strike five of five African Americans and succeeded in striking four[5]); *State v. Myers*, 761 So. 2d 498, 500, 503 (La. 2000) (reversing non-capital conviction where trial court erred in failing to address the defendant's *Batson* challenges to the State's peremptory challenges against six of seven African Americans).

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the ease with which discriminating prosecutors could cover their trails with fabricated race-neutral reasons. *Miller-El*, 545 U.S. 239-40.

[5] The number of African Americans struck by the prosecutor may be found by referring to the appellate record. *State v. Jacobs*, No. 1999-KA-1659, Tr. at 1286, 1292-93, 1296, 1301-03, 1455-57 (La.) (appellate record on file in Louisiana Supreme Court).

In capital murder cases such as Snyder's, the problem has been particularly stark. As reflected in available decisions and Louisiana Supreme Court records, Jefferson Parish prosecutors struck all or all but one qualified African-American venirepersons in eleven capital cases, including *Jacobs* and *Harris*. These prosecutions occurred both before[6] and after[7] Allen Snyder's trial. In a twelfth case, the

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[6] *See State v. Seals*, 684 So. 2d 368, 375 (La. 1996) (denying *Batson* challenge in 1993 trial where Jefferson Parish prosecutor struck three black venirepersons, leaving an all-white jury (documentation that jury was all-white contained in Appellant's Brief at 13, and Reply Brief at 6, on file in Louisiana Supreme Court); *State v. Lindsey*, 543 So. 2d 886, 897-98 (La. 1989) (denying *Batson* challenge where all-white jury seated after Jefferson Parish prosecutor struck three qualified black venirepersons); *State v. Durham*, 673 So. 2d 1103, 1113 (La. Ct. App. 1996) (denying *Batson* challenge in 1994 trial where all-white jury seated after Jefferson Parish prosecutor struck three black venirepersons and rejecting argument that two were similarly situated to non-struck white venirepersons under the incorrect rationale that "the mere fact that the state excuses one person with a particular characteristic and not another similarly situated person does not in itself show . . . a mere pretext for discrimination").

[7] *See State v. Bridgewater*, 823 So. 2d 877, 896 (La. 2002) (denying *Batson* challenge where all-white jury seated after Jefferson Parish prosecutor used peremptory strikes to remove two black venirepersons in 1998 trial); *State v. Neal*, 796 So. 2d 649, 654-55 (La. 2001) (denying *Batson* challenge where Jefferson Parish prosecutor used strikes to remove three out of four black venirepersons in 1999 trial); *State v. Taylor*, 781 So. 2d 1205, 1212-13 (La. 2001) (denying *Batson* challenge where Jefferson Parish prosecutor struck five out of six black venirepersons in 1998 trial); *State v. Parker*, 901 So. 2d 513, 521-22 (La. Ct. App. 2005) (denying *Batson* challenge where all-white jury seated after Jefferson Parish prosecutor excluded five of five black venirepersons); *State v. Arceneaux*, No. 2006-KA-2986, Tr. at 1189-90, 1105, 1183, 1184, 1185, 1190 (La. (appeal pending)) (denying *Batson* challenge where Jefferson Parish struck five black venirepersons and all-white jury seated) (appellate record on file in Louisiana Supreme Court); *State v. Lam*, No. 2001-KA-2729, Tr. at 1050-51 (La. (appeal pending)) (denying *Batson* challenge where Jefferson Parish prosecutor struck three of the four qualified black venirepersons and all-white jury seated

prosecutors attempted to strike all but one qualified African American, but the trial judge intervened and ordered that a second African-American venireperson be seated.[8] The Jefferson Parish prosecutor's strikes in these cases are summarized in the following chart:

Case Name	Qualified African-American Venire-persons Struck	Number of African-American Jurors
Harris	3 of 4	1
Jacobs	4* of 5 * prosecutor attempted to strike 5	1
Bridgewater	2 of 2	0
Neal	3 of 4	1
Taylor	5 of 6	1
Seals	3 of 3	0
Durham	3 of 3	0
Lindsey	3 of 3	0

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because defense had previously struck one black venireperson) (appellate record on file in Louisiana Supreme Court).

[8] *See State v. Ball*, 824 So. 2d 1089, 1097, 1119 (La. 2002) (denying *Batson* challenge where ten whites and two African Americans sat on jury where although the trial court found race based decision making by the Jefferson Parish prosecutor after he struck four African Americans, he allowed the prosecutor to "back select" a previously struck African-American woman instead of reseating the improperly struck juror).

Parker	5 of 5	0
Arceneaux	5 of 5	0
Lam	3 of 4	0* *1 struck by defense
Ball	3* of 5 * prosecutor attempted to strike 4	2
TOTAL in 12 Cases:	42 of 49 * prosecutor attempted 44	6

In sum, in 12 capital murder cases, the Jefferson Parish District Attorney sought to strike 44 out of 49 – approximately 90% – of qualified African-American venirepersons (and were unsuccessful only twice).[9] Six out of the 144 petit jurors in these 12 capital cases is 4%, substantially lower than the proportion of African Americans in Jefferson Parish.[10]

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[9] In one additional known capital prosecution, an all-white jury served, but it is not known whether the prosecutor used peremptory strikes to remove qualified black venirepersons. *See State v. Chester*, 724 So. 2d 1276 (La. 1998) (affirming death sentence rendered by all-white jury although there was no *Batson* claim (documentation that jury was all-white contained in Appellant's Brief at 5, on file in Louisiana Supreme Court)).

[10] *See Census 2000*, United States Census Bureau (2000) (available at http://factfinder.census.gov (last visited Aug. 30, 2007) (noting African-American population of Jefferson Parish to make up 17.6% of total in 1990 and 22.9% in 2000).

These numbers are representative of the capital murder prosecutions in Jefferson Parish.[11] After a detailed examination of published cases and available Louisiana Supreme Court records, *amici* can find only one Jefferson Parish capital murder prosecution in which two African-American jurors sat, *see Ball*, 824 So. 2d at 1097, 1119; the remaining trials had no or one African-American juror.

A 2003 statistical study of 390 trials and 10,000 prospective jurors in Jefferson Parish from 1994 to 2002 demonstrates a similar pattern of race-based strikes. *See* Richard Bourke, Joe Hingston, and Joel Devine, *Black Strikes: A Study of the Racially Disparate Use of Peremptory Challenges By the Jefferson Parish District Attorney's Office* (available at Blackstrikes.com) (last viewed on Aug. 30, 2007).[12] The data revealed that prosecutors used peremptory strikes to remove 55% of qualified African-American venirepersons, while peremptorily challenging only 16% of qualified white venirepersons. *Id.* at 6. In his statistical analysis of this data, Professor Joel Devine of the Center for Applied Social Research at Tulane University determined that "there is a racial disparity in the state's use of peremptory challenges and that this disparity is highly significant." *Id.* at 7.

"'Happenstance is unlikely to produce [these] disparit[ies].'" *Miller-El*, 545 U.S. at 241 (noting unlikelihood of similar disparity within single trial) (quoting *Miller-El v. Cockrell*, 537 U.S. 322, 342 (2003)).

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[11] There have been 23 post-*Batson* capital murder trials in Jefferson Parish. *See* Amicus Br. of Louisiana Association of Criminal Defense Lawyers in Supp. of Pet. for Cert., at 16 & nn.42-43. Twenty of those trials resulted in death sentences, including 18 trials where the jury's racial composition was documented. *Id.* Of those 18 trials, 10 had zero black jurors, seven had one black juror, and one had two black jurors. *Id.*

[12] The study is also on file in the Louisiana Supreme Court with the writ application in *State v. Harris*, Sup. Ct. No. 03-KK-3549.

The constitutional injury inflicted by systemic discrimination extends beyond the individual defendants to *amici* and their congregants, who have been prevented "from making a significant contribution to governance on account of [their] race." *Johnson v. California*, 545 U.S. 162, 172 (2005). *See also Smith v. Texas*, 311 U.S. 128, 130 (1940) ("For racial discrimination to result in the exclusion from jury service of otherwise qualified groups not only violates our Constitution and the laws enacted under it but is at war with our basic concepts of a democratic society and a representative government." (footnote omitted)).

Important in all trials, the opportunity to participate "in the administration of the law[] as jurors" and to weigh the State's arguments, *Strauder*, 100 U.S. at 308, is crucial in cases where the State uses race-based arguments to obtain a death sentence against an African-American defendant.

Jefferson Parish prosecutors have undermined *amici*'s "confidence in our judicial system." *J.E.B.*, 511 U.S. at 140. *Batson* must mean more than it did to the majority in the court below if African Americans are to be a part of the jury system in Jefferson Parish. Recognition by this Court that the prosecutor wielded his peremptories for the purpose of racial discrimination in Snyder's case would begin the healing necessary before African Americans' confidence in the Jefferson Parish (and Louisiana) criminal justice system may be restored.

B. Jefferson Parish Prosecutors Have Exhibited Racial Insensitivity in their Public Statements and Actions Regarding Capital Cases.

The prosecutor's unique role "transcends that of a adversary: [the prosecutor] 'is the representative not of an ordinary party to a controversy, but of a sovereignty . . . whose interest . . . in a criminal prosecution is not that it shall win a case, but that justice shall be done.'" *United States v. Bagley*, 473 U.S. 667, 675 n.6 (1985) (quoting *Berger v.*

United States, 295 U.S. 78, 88 (1935)). Instead of representing the community and seeking justice, Jefferson Parish prosecutors have publicly engaged in racially insensitive and offensive behavior regarding capital prosecutions. This behavior further places in context Jefferson Parish prosecutors' disproportionate use of peremptory strikes against African-American jurors, and prosecutor Williams's invocation of O.J. Simpson in closing argument after securing an all-white jury for Snyder's trial.

During an interview with writer Ivan Solotaroff in 1995, Jim Williams and another Jefferson Parish prosecutor joked about wanting to seat Nazis on capital juries.[13] The Nazis, of course, espouse principles of racial hatred and violence. *See, e.g., Jewish War Veterans of U. S. v. American Nazi Party*, 260 F. Supp. 452, 454 (N.D. Ill. 1966). In the same interview with Williams present, the other Jefferson Parish prosecutor was quoted as saying that "even if the murder was black on black," African-American prospective jurors still think of the death penalty as "white man's justice." Solotaroff, *supra* note 13, at 52. In his Jefferson Parish prosecutor's office, Williams showed off a tiny model electric chair holding cut-out faces of five African-American condemned men, every defendant against whom Williams had obtained a death sentence. *Id.* at 51.[14]

On other occasions, Jefferson Parish prosecutors have appeared in capital courtroom proceedings with neckties depicting a grim reaper and a hangman's noose.[15] As a

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[13] *See* Ivan Solotaroff, *The Last Face You'll Ever See: The Private Life of the American Death Penalty* 52 (2001).

[14] A photograph of the model was originally published in Ivan Solotaroff, *The Last Face You'll Ever See*, ESQUIRE, Aug. 1995, at 97.

[15] *See* James Gill, *Ghoulish Neckties Were Just Their Style*, TIMES-PICAYUNE, Jan. 10, 2003, at 7 (Metro Section); Jeffrey Gettleman, *Prosecutors' Morbid Neckties Stir Criticism*, N.Y. TIMES, Jan. 5, 2003, at A14; Joe Darby, *Prosecutors' Choice of Neckties Blasted: Noose, Grim*

prominent African-American federal district court judge has observed, "the noose is among the most repugnant of all racist symbols, because it is itself an instrument of violence. It is impossible to appreciate the impact of the display of a noose without understanding this nation's opprobrious legacy of violence against African-Americans." *Williams v. New York City Hous. Auth.*, 154 F. Supp. 2d 820, 824 (S.D.N.Y. 2001) (Carter, J.) (citation omitted).[16] Not surprisingly, the father of an African-American defendant in one such case called the noose necktie "clearly racist."[17]

The jury serves as an indispensable bulwark against an overreaching prosecutor, particularly when the State seeks to prosecute and execute a member of a minority and acts in a racially insensitive manner. Excluding African Americans from this vital process weakens this protection. It is the antithesis of justice.

C. The Prosecutor Knew that an All-White Jefferson Parish Jury Would Likely Be Responsive to a Racially-Charged "O.J." Argument for Death.

Less than a year before Petitioner's August 1996 trial, a Los Angeles jury acquitted O.J. Simpson. *See, e.g.*, Martin

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Reaper Worn in Murder Case, TIMES-PICAYUNE, Jan. 5, 2003, at 1; Katy Reckdahl, *Ties that Bind: For Courtroom Observers, Recent Reports of Grim Reaper and Noose Neckties in Jefferson Parish Courtrooms are Knotted Up in Issues of Race and History*, GAMBIT WEEKLY, Jan. 14, 2003 (available at http://www.bestofneworleans.com/dispatch/2003-01-14/news_feat.html) (last visited Aug. 30, 2007) (noting that the ties were given to prosecutors for Christmas in 2001 and worn by at least two prosecutors until a defense attorney filed a motion in December of 2002).

[16] A noose could not represent current judicial punishment. Louisiana outlawed execution by hanging in 1941. *See, e.g., State ex rel. Pierre v. Jones*, 9 So. 2d 42, 43 (La. 1942).

[17] Jeffrey Gettleman, *Prosecutors' Morbid Neckties Stir Criticism*, N.Y. TIMES, Jan. 5, 2003, at A14.

Gottlieb, *Not Guilty: The Racial Prism*, N.Y. TIMES, Oct. 4, 1995, at A1. Across the country, in significant numbers, African Americans and whites reacted with diametrically opposed views on the verdict. *Id.* A CBS News poll taken immediately afterward found that roughly 60 percent of whites believed the jury reached the wrong verdict, i.e., that Simpson got away with murder, while 90 percent of blacks believed the jury's verdict was correct. *Id.*[18] Louisianans similarly divided along racial lines.[19]

Due to these stark divisions, urging an all-white jury anywhere in America to avoid another unjust O.J. verdict would be highly inflammatory and inappropriate. This type of argument, however, was especially likely to inflame the passions and prejudices of an all-white Jefferson Parish jury.

Jefferson Parish grew immediately to the west of New Orleans as a "primary destination for white flight," particularly from 1960 to 1980.[20] Once ensconced there, the white majority resorted to racial discrimination and segregation on numerous fronts. *See generally Citizens for a Better Gretna v. City of Gretna, La.*, 636 F. Supp. 1113, 1116 (E.D. La. 1986) ("The historical record of discrimination in the . . . Parish of Jefferson is undeniably clear, and the record suggests it has not ended even now."), *aff'd*, 834 F.2d 496 (5th Cir. 1987). As a Times-Picayune reporter explained,

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[18] *See also* Richard Morin, *Poll Reflects Division Over Simpson Case; Trial Damaged Image of Courts, Races Agree*, WASHINGTON POST, Oct. 8, 1995, at A31 (finding that 80% of African Americans thought the verdict was correct, while 55% of whites believed the verdict was wrong). CNN-TIME MAGAZINE POLL, Oct. 6, 1995 (finding that 88% of African Americans but only 41% of whites believed the jury's verdict was correct).

[19] *See, e.g., NOT GUILTY: Baton Rouge-area reactions range from cheers to disbelief*, THE ADVOCATE, Oct. 4, 1995, at 1A; John Pope, *Some in N.O. Elated, Some Stunned*, TIMES-PICAYUNE, Oct. 4, 1995, at A4.

[20] Donald Phares, *Metropolitan Governance Without Metropolitan Government?* 135 (2004).

"[m]any Jefferson Parish residents simply did not want to be around blacks." Tyler Bridges, *The Rise of David Duke* 143 (1995).

As late as the early 1970's, "[b]lacks were systematically denied access to restaurants, forced to sit in the rear of buses and subjected to separate and unequal facilities." *Citizens for a Better Gretna*, 636 F. Supp. at 1117; *see also Westwego Citizens for Better Gov't v. City of Westwego*, 946 F.2d 1109, 1114-15 (5th Cir. 1991) (adopting and noting stipulation of parties to history of racial discrimination in Jefferson Parish testified to by expert in *Citizens for a Better Gretna* case).

In 1987, the elected Jefferson Parish Council ordered the construction of a concrete and wood barricade along the parish line to prevent residents from largely black Orleans Parish from entering Jefferson Parish.[21] Black New Orleans residents called the barricade "the Berlin Wall."[22] New Orleans Mayor Sidney Barthelemy, who was African-American and believed that racism was a factor in the decision to erect the barriers, ordered them bulldozed as illegal.[23] The Jefferson Parish Council President, who was white, vowed to rebuild the barriers.[24] He relented only after Louisiana's State Highway Department said that the barriers were illegal.[25]

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[21] *See Barricades to Black Drivers Dismantled*, L.A. Times, Feb. 22, 1987, at 25.

[22] *See New Orleans, Suburb Feud Over Wall*, CHI. TRIB, Feb. 23, 1987, at 5.

[23] *See Suburb Backs Down, Won't Put Walls Up*, L.A. TIMES, Feb. 23, 1987, at 2. *See also* preceding two notes, *supra*.

[24] *Id.*

[25] *Id.*

Jefferson Parish had not remedied its history of racial discrimination by the time of Petitioner's trial in 1996.[26] As recently as 1989, Jefferson Parish voters elected David Duke, a former Grand Wizard of the Ku Klux Klan, to a state house seat.[27] In subsequent gubernatorial and senate elections in 1990 and 1991, Duke carried Jefferson Parish.[28] And the parish had repeatedly reelected a sheriff, Harry Lee, known for pointedly derogatory remarks towards African Americans.[29] Less than a year before Petitioner's trial, "Lee was easily re-elected with 71 percent of the vote in the primary." *Top 10 West Bank Stories of 1995*, TIMES-PICAYUNE, Dec. 31, 1995, at 1F1.

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[26] Although amici could point to persuasive and ample evidence that such racial discrimination continues to this day, *see, e.g.*, Gardiner Harris, *Storm and Crisis: Battling the Storm; Police in Suburbs Blocked Evacuees, Witnesses Report*, N.Y. TIMES, Sept. 10, 2005, at A13, present-day information is of lesser relevance to Snyder's *Batson* claim than the well-known racial animus in Jefferson Parish leading up to the time of the prosecutor's peremptory strikes in 1996.

[27] Frances Frank Marcus, *Winner in Louisiana Vote Takes on G.O.P. Chairman*, N.Y. TIMES, Feb. 20, 1989, at A1.

[28] Leonard Zeskind, *For Duke, Just a Start?*, N.Y. TIMES, Oct. 9, 1990, at A25; Kim Chatelain and Joe Darby, *Jeff Parish Fails Duke in Runoff*, EDWARDS SHARE OF PARISH VOTE JUMPS BY 182%, TIMES-PICAYUNE, Nov. 20, 1991, at A1; David Meeks, *An Ill-Conceived Business Boycott*, TIMES-PICAYUNE, Nov. 24, 1991, at B7.

[29] For example, in 1994, two years before Petitioner's trial, the black community criticized Lee's office when two black men it had arrested and "hog tied" died in custody. Jim Yardley, *Sheriff Rules Louisiana Parish With an Iron Fist But Chinese-American Lawman Denies Racism*, ATL. J. AND CONST., May 1, 1994, at A3. In response, Lee removed a special street crime unit from Avondale, a black neighborhood. *Id.* "'To hell with them,' Lee said at the time. 'I don't need that. I haven't heard one word of support from one black person.'" *Id.* For a similar incident, *see* Frances Frank Marcus, *Louisiana Sheriff Backed after Racial Remark*, N.Y. TIMES, Dec. 23, 1986, at A17.

Jefferson Parish's history of racial discrimination and repeated support for racially divisive candidates and policies provides a probative context for understanding why the prosecutor struck all qualified black venirepersons and compared Snyder, a black man, to O.J. Simpson. This context is critical for at least three reasons.

First, the Louisiana Supreme Court's judgment below threatens one of *Batson*'s crucial policy objectives – maintaining minority confidence in our criminal justice system. *J.E.B.*, 511 U.S. at 128; *Batson*, 476 U.S. at 87. A state's exclusion of minorities from jury service using discriminatory peremptory strikes is always of great concern to the excluded minorities. Jefferson Parish's history of racial discrimination only exacerbates such concerns in Petitioner's case. Not only were qualified African Americans excluded from service – in and of itself hurtful – but they are understandably less likely to have confidence in the legitimacy of a verdict rendered by an all-white jury drawn from Jefferson Parish.

Second, as this Court stated when it first ruled squarely against racial discrimination in jury selection, "[i]t is well known that prejudices often exist against particular classes in the community, which sway the judgment of jurors, and which, therefore, operate in some cases to deny to persons of those classes the full enjoyment of that protection which others enjoy." *Strauder*, 100 U.S. at 309. Ongoing racial discrimination in Jefferson Parish lends tangible substance to these observations. Reaffirming the promises of *Swain* and *Batson* and their progeny remains necessary to guarantee black defendants a fair trial in Jefferson Parish.

Third, under *Batson*, the credibility of the prosecutor's denial of using race-based peremptories is crucial. 476 U.S. at 98. Attention to O.J. Simpson's "trial of the century," and its fallout along racial lines, continued for many months after the October 1995 not-guilty verdict, and

remained a media preoccupation at the time of Snyder's trial.[30] Similarly, Jefferson Parish's frequent strife and support for racially divisive figures such as David Duke were highly publicized. In other words, it "blinks reality"[31] to believe that prosecutor Williams did not know that a substantial number of Jefferson Parish whites would have believed that O.J. Simpson ;ot away with murder. The prosecutor's denial that race was at play when he crafted Petitioner's all-white jury and then urged it to avoid another O.J. verdict is, thus, not credible.

CONCLUSION

For the reasons stated herein, the judgment below should be reversed.

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[30] Larry Margasak, *Simpson: 'Lord is on My Side' Media Blamed as the Evildoers*, TIMES PICAYUNE, Aug. 29, 1996, at A6; *No Cameras Allowed at O.J.'s Civil Trial*, TIMES PICAYUNE, Aug. 24, 1996, at A2; J.E. Bourgoyne, *Writer: O.J. Trial a Farce that Didn't Rate a Book*, TIMES PICAYUNE, Aug. 17, 1996, at A17.

[31] *Miller-El*, 545 U.S. at 266.